

United States Senate

WASHINGTON, DC 20510

August 29, 2019

The Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: *New York State Rifle & Pistol Association v. City of New York*, No. 18-280

Dear Mr. Harris:

We write with regard to the petition in the above-titled case. That petition challenges a New York City law forbidding the transportation of locked, unloaded handguns, with few exceptions, as a violation of the Second Amendment. The City changed its laws after the Court granted the Association's petition. The Court therefore confronts the question whether the change in New York City's laws has mooted the Second Amendment challenge.

On August 12, several of our Democrat colleagues filed a brief *amicus curiae* in support of the City urging the Court to dismiss the case as moot under Article III of the Constitution. We of course have no problem with Senators submitting *amicus* briefs. Many of us have done so. But our colleagues did more than raise legal arguments in favor of mootness. They openly threatened this Court with political retribution if it failed to dismiss the petition as moot. The brief's final paragraph warned: "The Supreme Court is not well. And the people know it. Perhaps the Court can heal itself before the public demands it be 'restructured in order to reduce the influence of politics.' Particularly on the urgent issue of gun control, a nation desperately needs it to heal." The implication is as plain as day: Dismiss this case, or we'll pack the Court.

There is no greater example of the genius of our Constitution than its creation of an independent judiciary. Alexander Hamilton explained in Federalist No. 78 that "[t]he complete independence of the courts of justice is peculiarly essential in a limited Constitution." Only an independent judiciary can "guard the Constitution and the rights of individuals from ... dangerous innovations in the government, and serious oppressions of the minor party in the community." And history has proven the wisdom of this design. Time and again, our independent federal courts have protected the constitutional rights of Americans from government overreach even when that overreach was politically popular.

But judicial independence is under assault. Democrats in Congress, and on the presidential campaign trail, have peddled plans to pack this Court with more justices in order to further their radical legislative agenda. It's one thing for politicians to peddle these ideas in Tweets or on the stump. But the Democrats' *amicus* brief demonstrates that their court-packing plans are more than mere pandering. They are a direct, immediate threat to the independence of the judiciary and the rights of all Americans.

The Association has asked this Court to consider the constitutionality of a law that it believes infringes on the fundamental constitutional rights of ordinary New Yorkers. Democrats have responded by threatening to pack the Court if it decides in favor of the Association. Americans cannot trust that their constitutional rights are secure if they know that Democrats will try to browbeat this Court into ruling against those rights.

We are deeply concerned by our colleagues' *amicus* brief and the ideas it promotes. We take no position on the underlying Second Amendment question nor on the mootness issue currently before the Court. But judicial independence is not negotiable. We will brook no threats to this fundamental precept of our constitutional structure.

We therefore ask that the Justices fulfill their oaths to "faithfully and impartially" follow the law. They should rule in this case only as the law dictates, without regard to the identity of the parties or the politics of the moment. They must not be cowed by the threats of opportunistic politicians. Our constitutional republic depends on an independent judiciary ruling impartially on the basis of what the law says. We ask that the Justices stand firm and do their part to protect our "government of laws, not of men."

For our part, we promise this: While we remain Members of this body, the Democrats' threat to "restructure[]" the Court is an empty one. We share Justice Ginsburg's view that "nine seems to be a good number." And it will remain that way as long as we are here.

Jeff McConell

Tom Ichniowski

Chuck Grassley

Lamar Alexander

John Boozman

Joni K. Ernst

Jim Inhofe

Pat Roberts

Byung

Thomas Tillis

Mike Cyro

John Barrasso

Marsha Blackburn

Jerry Moran

Lyndie Wick

Cindy Hyde-Smith

Tom Scott

M. Michael Bond

John Cornyn

Bill Cassidy, M.D.

Ron Johnson

Tom Lulli

Joe Manchin

Michael B. Enzi

Mike Braun

Prof. S.E.

John Hoover

Richard Shelby

~~Samuel~~

John H. H. H.

Pat Rooney

Susan M. Collins

Steve Daines

Ben Sasse

Mitt Romney

7-18

~~Shelley Moore Capito~~

Rand Paul

Shelley Moore Capito

Roy Blunt

Long Dancer

Tom Cotte

McPh

John D. Hume

Lisa Neuharth

Kevin Cramer

Martha McCally

John Kennedy

Rob Portanova

David A. Hume

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Rob Dwyer

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